

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION AT COLUMBUS**

In re: OHIO EXECUTION
PROTOCOL LITIGATION,

Case No. 2:11-cv-1016

Chief Judge Edmund A. Sargus, Jr.
Magistrate Judge Michael R. Merz

This Order relates to All Plaintiffs

**DECISION AND ORDER ON TESTING MATERIALS FROM THE
OTTE EXECUTION**

The testing of materials used during the execution of Gary Otte on September 13, 2017 shall proceed as follows:

1) Defendants will remove the identifying labels from the drug vials, and will re-label them with numbers for testing purposes. The Defendants have segregated the midazolam vials into two groups. The vials that became the contents of syringes 1 & 2 shall be labeled # 1-10 and the vials that became the contents of syringes A & B shall be labeled # 11-20. The remaining vials shall retain the numbering system this Court set forth in ECF No. 1154, to wit, the ten rocuronium vials shall be labeled # 21-30, and the six potassium chloride vials shall be labeled # 31-36;

2) the IV tubing shall be labeled in accordance with the specific location to which it was attached;

3) the syringes shall retain their alphabetic or numeric labels;

4) the drug vials, IV tubing and syringes shall be sent to Avomeen Analytical Services, 4840 Venture Drive, Ann Arbor, Michigan, 48108, for quantitative testing to determine the volume of liquid remaining in those medication vials, IV tubing, and syringes, with the costs for such testing to be borne by the Plaintiffs since they have requested that the testing be conducted.

Plaintiffs desire to have Avomeen Analytical Services measure the length of the IV tubing. Defendants were provided an opportunity during the scheduling conference on September 21, 2017, to explain their objections to that request. Without determining whether the length of the tubing is or may be material to any issue in the case, the Court finds having the tubing measured imposes no burden on Defendants.

Accordingly, it is **ORDERED** that paragraphs (1)-(4) above shall be implemented. Defendant Richard Theodore shall, no later than 3:00 p.m. on Thursday, September 21, 2017, prepare for shipment all of the vials, as well as the syringes and the tubing preserved by the Defendants pursuant to this Court's preservation order (ECF No. 1232), and shall ship these items for overnight delivery to Avomeen Analytical Services, 4840 Venture Drive, Ann Arbor, Michigan, 48108, for quantitative testing to determine the volume of liquid remaining in those medication vials, IV tubing and syringes.

The testing of the Otte execution materials shall also include measurement of the length of the IV tubing.

September 21, 2017.

s/ *Michael R. Merz*
United States Magistrate Judge

